customers in the WFA system, therefore, completely undermines SWBT's claim that it will be unable to discriminate.

VII. SPECIFIC EXAMPLES OF DETERIORATION IN THE LEVEL OF SERVICE PROVIDED BY RBOCS TO AT&T

46. Historically, AT&T and its RBOC access suppliers have assessed supplier performance against AT&T's expectations using "direct measures of quality" (DMOQs), which provide a quantitative assessment of how well a process or service is contributing to meeting customer expectations, typically focusing on timeliness and accuracy.[10] DMOQs have specific objectives that serve as benchmarks for performance expectations. The objectives are based on customer expectations regarding the specific process or service performance that is being targeted. As a customer's expectations change and technology improves, objectives typically become more stringent.

47. AT&T DMOQs are also used between companies to establish a common understanding of expectations for a contracted service. DMOQs are critical for AT&T effectively to provide local exchange and interexchange services. Without DMOQs, it is difficult to monitor or manage the relationship with one's end user customer, which is critical to achieving customer satisfaction and business goals.

[10] Timeliness addresses cycle times, such as how long it takes to complete a specific individual action or sequence of actions. Accuracy addresses mistakes, errors, and availability for the purpose intended. Some examples for timeliness include how long it takes a customer to reach an operator, and how long it takes to repair a disrupted service. Examples for accuracy include the number of bills that have the correct charges, how many customer records in a database are correct, and the number of completed calls.

48. Perhaps in anticipation of their new role as competitors with AT&T, certain RBOCs over the past couple of years, and increasingly more recently, have changed their attitude toward meeting AT&T's DMOQ standards. Several RBOCs have stated that they will no longer adhere to standards for provisioning, maintenance, and repair. For example, in June 1996, SWBT changed its repair policy and would no longer tell AT&T of the progress of repair on telephone lines, even though AT&T's service to an AT&T customer was affected. Under the new policy, SWBT communicates only with AT&T's end user customer. As another example, Bell Atlantic no longer supports AT&T's standard of three hours for repair time for dedicated access lines, and now only commits to "arrive by" a certain time after the trouble is reported. US WEST's commitment to repair POTS lines within 3 hours has now been increased to 24 hours. With respect to provisioning, Bell Atlantic, Ameritech, NYNEX, Pacific Bell and U S West have all stopped complying with AT&T's Customer Desired Due Date ("CDDD") DMOQs, which measures how well the RBOCs meet the date on which a customer seeks to begin service. This refusal to adhere to the CDDD standard has led to increased aggravation, and reduced service quality, for AT&T customers who are not able to obtain service on their desired date.

49. In addition to the changes in policies relating to provisioning, repair and maintenance by the RBOCs, there has been a decrease in quality of service provided by the RBOCs to AT&T. As an example, our total RBOC maintenance performance decreased 4.4% in 1996. In response to serious declines in service quality, AT&T recently has filed complaints with

state regulatory commissions against NYNEX,[11] Pacific Bell,[12] and US West,[13] regarding, among other matters, declines in the time to provision new customer service and the time to restore failed customer lines.

50. These examples all illustrate the actions that can and have been taken by RBOCs to degrade AT&T's service in terms of provisioning, maintenance, and repair. Such actions will undoubtedly increase in the future as RBOCs are permitted to enter the interexchange market. The incentives to degrade service to IXCs are limited if the RBOCs have no interexchange affiliate to provide an alternative service to customers, but those incentives increase markedly once RBOCs have such an affiliate.

VIII. INEFFECTIVENESS OF REPORTING REQUIREMENTS

51. Reports developed to identify discriminatory practices by incumbent LECs typically provide primarily maintenance and installation information about a set of "service categories" made available by an RBOC. The reports provide information about orders received,

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[11] Complaint of AT&T-New York Against New York Telephone Company for Failure to Provide Just, Adequate, and Reasonable Service Quality Standards For The Provisioning and Maintenance Of Access Services, Case No. 96-C-0572, (NYPSC filed June 24, 1996).

[12] AT&T Communications of California, Inc. (U 5002 C) brings the Complaint against Pacific Bell (U 1001 C) pursuant to Sections 9-11 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California, Case No. 96-12-044 (CPUC filed Dec. 23, 1996).

[13] In the matter of the Complaint of AT&T Communications of the Midwest, Inc., against US West Communications, Inc. Regarding Access Service, Case No. E-1051-97-117 (Ariz. CC filed Feb. 14, 1997); In the matter of the Complaint of AT&T Communications of the Midwest, Inc. against US West Communications, Inc. Regarding Access Service, Case No. P-421/C-97-238 (Minn. PUC Feb. 14, 1997).

due dates missed, and the average time intervals in which the RBOC responded to orders. There is, however, no form of such reports -- and no possible use of access "report cards" or "benchmarks" -- that can completely prevent discrimination that benefits an RBOC's interexchange affiliate in the provisioning of existing access services. An RBOC can discriminate in favor of its affiliate while showing identical average intervals for affiliated and non-affiliated IXCs. It can, for example, afford its affiliate shorter intervals whenever it is important to the end user customers (and longer intervals when it is unimportant); it can forgive its affiliate's failures to comply with all its filing or other requirements, or be strict with non-affiliates; or it can engage in a myriad of other devices.

52. The Commission's proposed reporting requirements relating to service intervals, although helpful, are likewise unable to preclude abuse. The Commission has proposed that a BOC maintain the following information:

(1) successful completion according to desired due date, measured in a percentage;

(2) time from the BOC's promised due date to circuit being placed in service, measured in terms of the percent installed within each successive 24-hour period until 95% installation completed;

(3) time to firm order confirmation measured in terms of percentage received with each successive 24-hour period until 95% completed;

(4) time from PIC change request to implementation, measured in terms of percentage implemented within each successive 6-hour period, until 95% completed;

(5) time to restore and trouble duration, measured in terms of percentage restored within each successive 1-hour interval, until resolution of 95% of all incidents;

(6) time to restore PIC after trouble incident, measured by percentage restored within each successive 1-hour period, until resolution of 95% restored; and

(7) mean time to clear network/average duration of trouble, measured in hours.[14]

While better than most existing reports and valuable in identifying certain abuses, these requirements measure only certain aspects of performance and do not include other service quality measures (e.g., failure frequency, report failure rate, incidence of new circuit failures, and jeopardy notification provided). Moreover, while superior to traditional measures that rely solely on averages, these measures use percentages and averages that, as described above, are subject to similar manipulation and adjustment to reach a desired result. Thus, the RBOCs would still be free to manipulate the numbers to favor its affiliate when it was important.

53. Nor can other "report cards" or "benchmarks" be remotely adequate. The reports or benchmarks cannot even potentially detect an RBOC's provision of better and quicker services to its interexchange affiliate, particularly if such RBOC action does not adversely affect or degrade the level of service historically provided to IXCs. Nor can they remotely affect any foot dragging, or other delays, which an RBOC could claim to have been attributable to legitimate

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[14] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice Of Proposed Rulemaking, ¶¶ 371-372 and Appendix C. (rel. Dec. 24, 1996) ("Non-Accounting Safeguards Order").

factors, such as facility shortages, failures to fill out order forms properly, or similar circumstances.

IX. DISCRIMINATION IN PRICING

54. The RBOCs have the ability today to engage in price discrimination that favors their services to the detriment of competing services by IXCs. As an example, Bell Atlantic filed tariffs in 1993 for "Centrex Extend Service," which permitted a Centrex customer to place calls to any of its business locations (including employees' homes), anywhere within the LATA, at rates of 9-11 cents per message. Bell Atlantic did not make these transport rates available to end users that do not employ Centrex services, and its traffic sensitive access charge, together with its lowest message recording charge, was about 4.5 cents per minute on a typical call. This rate structure violated the imputation rules of the Maryland PSC requiring that the revenues from each increment of service exceed the access charge that Bell Atlantic imposes on IXCs.[15] In December 1994, the Maryland PSC ordered Bell Atlantic to revise its Centrex Extend Service tariff to comply with the state's imputation rules. Bell Atlantic made a compliance filing in July 1995, but that filing included anticompetitive provisions that restricted the resale of the service and permitted Bell Atlantic to provide off-tariff ICB pricing without notice and review by competitors. In August 1995, the Maryland PSC ordered Bell Atlantic to comply with the safeguards by eliminating all resale restrictions and allowing inspection of all ICB-priced contracts

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[15] See, e.g., The Chesapeake and Potomac Telephone Co. of Maryland, General Services Tariff, P.S.C. - Md. - No. 203, issued June 14, 1993, Sec. 13.Q.B.2 and C.2; Testimony of John D. Schell, Jr., Maryland Public Service Commission, Case No. 8585 (November 12, 1993).

by interested parties. Notably, in the face of regulatory enforcement activity, it took Bell Atlantic eighteen months to revise its initial unlawful tariffs, and it did so using other anticompetitive tariff provisions. It was not until the third quarter of 1995, almost 2 years after it initially introduced its offering, that Bell Atlantic brought its offering into compliance.

55. In Pennsylvania, Bell Atlantic has sought to favor Centrex customers over PBX competitors in connection with the state's unbundling of services. Pennsylvania had established an unbundling safeguards program to require the unbundling of basic service functions ("BSFs"), upon which Bell Atlantic's competitors' services are based. In addition, an imputation safeguard for competitive services requires that Bell Atlantic impute a price not less than the rate charged to others for the BSFs used to provide the competitive service. The Pennsylvania Commission ruled that Bell Atlantic could not satisfy its unbundling requirement by offering PBX trunks to other parties and failing to unbundle the BSFs of its own Centrex service. The Commission ruled that PBX trunks were not part of Bell's Centrex service, and subsequently found that Bell Atlantic's proposal would result in discrimination in the pricing of its Centrex service in comparison to the cost of the competitive PBX trunks.[16]

56. The potential for an RBOC unfairly to advantage itself through discrimination in the pricing of access increases greatly if an RBOC affiliate is offering interexchange services. In such a case, the RBOCs are required to "impute" access charges to themselves or their affiliates equivalent to those imposed on competitors. In reality, it would be very difficult to enforce such a

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[16] Competitive Safeguards Investigation, Docket No. M-940587 (Pa. PUC Order entered Aug. 6, 1996).

requirement, which actually would be no more than a transfer payment from one RBOC entity to another. The large difference between what RBOC charge for access and the access costs gives the RBOCs enormous flexibility to manipulate access pricing or cross-subsidize other operations and services. For SWBT, the region-wide average interstate access charge is approximately 2.5 cents per minute, and the cost of providing access is approximately 0.4 cents per minute according to a study by Hatfield Associates.[17] As these figures demonstrate, SWBT enjoys a 4-cent advantage over IXCs on in-region calls and a 2-cent advantage over IXCs on calls with one in-region end. If the RBOCs are permitted to offer interexchange service prior to reform of the access charge system, the access charge would be merely an intracorporate transfer and would have no economic meaning for the RBOC, but it could be priced in a manner to harm competing IXCs.

57. A recent New York Public Service Commission decision illustrates the competitive impact of the disparity between access charges to IXCs and the access cost to an RBOC. As part of its Regional Calling Plan, NYNEX had offered a service called Personalized Rate Plan ("PRP"), which charged a flat rate based on the customer's historical usage. The plan satisfied the imputation test based on projected volumes, but the NYPSC found that it failed the imputation test based on actual usage because NYNEX had overestimated revenues per-minute due to higher than anticipated minutes. NYNEX was permitted to continue to offer the service on a temporary

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[17] Hatfield Model, Release 3.1.

basis and voluntarily decreased intraLATA carrier access charges.[18] This solution did not diminish the competitive harm to IXCs, however, which could not offer competitive services because of the inflated access charges.

58. The Commission is currently considering proposals to reform the access charge scheme in its Access Reform Notice of Proposed Rulemaking (NPRM). Several proposals are under consideration, with differing impacts on the level of access charges and the timing of implementation of such changes. To the extent that access charges remain above cost after any such reform, the opportunity for the RBOC to engage in discriminatory conduct will remain. Such incentives will also remain if the Commission adopts proposals allowing geographic de-averaging that would permit the RBOCs to increase rates in areas in which there is little competition but decrease rates where competition exists.

59. Even beyond these considerations, the RBOCs could favor themselves in a variety of ways that are virtually immune from detection. Specifically, an RBOC could engage in cross-subsidization by setting the price of access in ways designed to advantage interexchange affiliates, without regard to the actual costs of access, or the efficiencies of various access arrangements. These uneconomic pricing schemes, moreover, could be made to appear cost-based, and would therefore be difficult to challenge. Moreover, an RBOC's ability to collocate facilities or to declare any facility to be a POP would enhance its opportunity and incentive to price discriminate.

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[18] Order Approving Tariff Filing, in Part, Proceeding on Motion of the Commission to Investigate Performance-Based Incentive Regulatory Plans for New York Tel. Co., Case 92-C-0665, p. 11-14 (Aug. 21, 1996).

It will be impossible as a practical matter to prevent such conduct and to enforce the RBOCs' imputation to themselves of the same access prices they charge to IXC competitors.

60. An RBOC with an interexchange affiliate could discriminate by, for example, offering reduced rates on access based on growth in the volume of traffic. Growth discounts do not reflect actual volumes or increased efficiencies achieved by the local exchange. Yet they would advantage the RBOC affiliate, which inevitably would experience a substantial increase in traffic. In contrast, competing IXCs, who are already providing long distance service, would experience no such percentage increase in traffic and would derive little, if any, benefit from the discount. It is worth noting that at least one RBOC, NYNEX, has proposed such a growth-based discount on access in Vermont.[19]

61. An RBOC could also offer reduced rates based on the percent of an IXC's access minutes committed to the RBOC. Again, such commitments would not reflect actual volumes or efficiencies. Yet they would advantage RBOC-affiliated IXCs, who would readily commit large portions of their access demand to their own access affiliates, and might not initially have the demand to qualify for cost-based volume discounts. Significantly, Pacific Bell has already proposed an optional pricing plan for switched access services that would be available to IXCs

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[19] See In the Matter of NYNEX Telephone Companies' Petition for Waiver of Part 69 of the Commission's Rules to Offer the Vermont Market Plan, FCC Docket No. DA-93-1005, August 18, 1993.

that commit 50 percent of their applicable minutes of use to Pacific Bell.[20] These access-based discounts are also pricing schemes that RBOCs could use to defeat competition from CAPs.

62. An RBOC could also create an unfair advantage by offering reduced access rates to IXCs based on long-term commitments of 5, 10, or more years for facilities. RBOC affiliates, which because of their affiliation would be unlikely to take advantage of competitive access alternatives, could readily commit to these terms. By contrast, competing IXCs would not wish to foreclose future access alternatives, particularly given the RBOC's ability and incentive to discriminate in providing access. IXCs would then be forced to wait and hope for meaningful local access competition at some point in the future. Until that competition develops, competing IXCs would be disadvantaged relative to RBOC-affiliated IXCs, which could take the long-term discount without fear of discrimination.

63. RBOCs are already using these above-mentioned methods of price discrimination-- in anticipation of interLATA relief -- to favor their interexchange affiliates. Ameritech's Network Optimization Partnership provides a substantial discount for dedicated transport used to provide switched access service, but only if a customer makes a five-year commitment to provide 100 percent of all growth in business to Ameritech, maintains all current service with Ameritech, and converts current and future service to sixty-month plans. Customers of this plan also receive free network management and optimization of facilities. The principal of this plan will be ACI, Ameritech's interexchange affiliate, which will have the benefit of

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[20] See In the Matter of Pacific Bell, Petition for Waiver of Pacific Bell, FCC Docket No. DA 93-1580, December 23, 1993.

transferring the cost of management of its network to regulated ratepayers and paying a reduced tariff price.[21]

64. Similarly, NYNEX offers a Service Discount Plan ("SDP") in New York state. A 40 percent discount for DS3 lines is available to SDP customers, who must commit to a ten year price agreement. Such an agreement will not be attractive to an IXC, but will be attractive to the NYNEX interexchange affiliate.[22]

65. An RBOC could also easily create a non-cost-based distance-sensitive rate for local transport from end offices or wire centers to POPs, whether by direct connect or via access tandem, charging small amounts for short hauls and much larger amounts for slightly longer hauls, or otherwise tailor their rates to accommodate the network facilities that are deployed by the affiliate. Because rates are not set by a competitive marketplace, the RBOCs have significant flexibility in setting prices, without regard to underlying costs.

66. At the same time, an RBOC could unfairly advantage itself by failing to offer justifiable discounts on access, even where those discounts would otherwise be offered. For example, an RBOC could refuse to establish volume discounts for dedicated local transport facilities between central offices and IXC POPs. If an RBOC had little interest in a volume discount, an RBOC could simply choose not to propose one. And since the RBOC effectively controls the tariff initiation process, no IXC could force it to do so.

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21 FCC Transmittal No. 1040 (filed Dec. 27, 1996).

22 FCC Transmittal No. 114 (filed Aug. 25, 1992).

67. An RBOC could also utilize the tariff process to advantage itself by changing access charges frequently for various types of access and using its knowledge of the changes to its benefit before competitors could react, another form of "headstart." Regulation cannot prevent this type of abuse.

68. Moreover, the new tariff filing requirements established in accordance with the Act will make it more difficult to detect and correct RBOC abuses through regulation. Section 402 of the Act permits the LECs to file tariffs on a streamlined basis. In the absence of action by the Commission, rate reductions became effective in seven days and increases became effective in fifteen days.

69. Indeed, because an RBOC has a monopoly over access services in its region, it could simply pursue a classic "price squeeze," raising the price of access to all IXCs. Alternatively, it could lower its interLATA rates below competitive levels. Such a "price squeeze" could actually increase an RBOC's profits, because, so long as access rates exceed access costs, a "price squeeze" strategy would stimulate growth in access revenues.

X. CROSS-SUBSIDIZATION

70. In addition to manipulating the prices faced by competitors, an RBOC could also improperly shift costs from its interexchange business to the monopoly local exchange and access businesses. The RBOCs would incur little risk in cost shifting activities since local exchange and access customers have few viable alternatives to RBOC services, whatever they might cost. It appears that common staff and facilities might be allowed to be used to provide many elements of local exchange access and interexchange services, including planning, procurement, marketing,

sales and advertising, billing and collection, and general overhead and administration. In short, permitting the RBOCs to provide interexchange services creates precisely the opportunities for cross-subsidization that led to the divestiture.

71. An RBOC would be in a position to shift labor costs from its competitive interexchange services to its local monopolies. For example, the costs of the personnel needed to provide administrative services for the interexchange and local exchange operations could be easily misallocated. Further, it would be practically impossible to police and prevent these misallocations, regardless of the regulations that might be adopted to prohibit them.

72. Other types of costs can also be misallocated. To compete in the interexchange business, an RBOC would have to establish product management and research and development organizations to conceive and create new services. If such organizations were integrated with existing organizations developing local services, a model for cross-subsidy would be established. Joint billing is another example of a significant opportunity for cross-subsidy. Since many local services complement long distance services, RBOC product development personnel could very easily shift the costs of the time, effort, and money expended on competitive services to monopoly ones. Similarly, it would be extremely easy for an RBOC to attribute time and effort spent on interexchange research to the local exchange or access business, particularly where efforts on an interexchange service proved unsuccessful, and, therefore, no one outside of the RBOC would learn of those activities. Although the Commission requires that an RBOC make these services available to all IXCs on a nondiscriminatory basis when the operating company provides it to its interexchange affiliate, violations of this requirement would be difficult

to detect. This would be particularly true when such activities are conducted on an integrated basis in a third entity, without benefit of the structural separation requirements. In all cases, the misallocation of costs cannot be prevented.[23]

73. RBOCs would also have to sell and market their interexchange services. The entire range of sales and marketing activities presents opportunities for misallocation of costs, particularly since the Commission has concluded that marketing activities may be pursued on an integrated basis.[24] Sales personnel, for example, must be trained, supported, evaluated, and motivated. The internal systems needed to perform these various functions are common to both local and interexchange businesses, and it would be nearly impossible to detect a modest but systematic transfer of educational, promotional, and travel costs associated with sales from one side of the house to the other. Marketing costs too could be easily shifted. Many of the most significant marketing activities -- such as developing lead lists and market share information and

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[23] NARUC and other regulatory bodies have made findings that RBOCs, including SWBT, have cross-subsidized competitive services with monies from regulated ratepayers. See, e.g., Five States Regulatory Commissions And Federal Communications Commission Joint Audit Team, Review Of Affiliate Transactions At Southwestern Bell Telephone Company (May 1994); Georgia Public Service Commission, Southern Bell Telephone Company -- Cost Allocations (Regulated/Nonregulated) and Affiliated Transactions (Sept. 1994) (cost shifting from company's regulated operations to its nonregulated operations and nonregulated operations of affiliates); Illinois Commerce Commission, Focused Management Audit of the Affiliated Transactions of Illinois Bell Telephone Co. (June 1993) (Illinois Bell billed for unregulated services performed by parent Ameritech); GAO, FCC's Oversight Efforts to Control Cross-Subsidization (1993) (noting few on-site audits by FCC examiners; such audits uncovered over $300 million in cross-subsidies); Wisconsin Public Service Comm'n, Audit Report on Ameritech (May 16, 1990) (misallocation of lobbying and other costs to regulated ratepayers).

[24] Non-Accounting Safeguards Order ¶ 168.

performing demographic analyses -- produce results that benefit, and can be used by, both local and long distance business units. Where these results would be used, and how the costs would be allocated, would as a practical matter be left to the RBOC.

XI. COMMERCIAL ADVANTAGE FROM ACCESS CHARGE INFORMATION

74. The RBOCs charge IXCs for access and thus develop substantial access information in order to bill the IXCs for access charges. These access records provide commercially useful information on calling patterns and IXC customer usage. The RBOCs also require advance information on new services that may affect access rating and billing systems. This advance information gives the RBOCs valuable competitive information about new service offerings. These kinds of information could be used by the RBOC to its competitive advantage to develop new services and to target market areas and customers.

75. Because of their dominant status as providers of local exchange and access services, the RBOCs control and collect information on facilities, traffic, usage, and demographics that would be of great value in the design and provisioning of interexchange services. There would be a great incentive for the local RBOC carrier to share this type of information with its long distance affiliate. Although the Act prohibits an RBOC from misusing another carrier's proprietary information, an RBOC would have powerful incentives to misuse such information -- especially since any CLEC or IXC injured by such disclosure would not immediately be able to obtain relief from a regulatory agency -- if at all. If this occurred, all other providers would be competitively handicapped in planning and provisioning their networks compared to the RBOC

local exchange and long distance affiliates. Such an inequitable situation would seriously impede competition.

76. The danger of potential use of billing information is not hypothetical. This past year, Pacific Bell sought to establish a rewards program based on the customer's monthly Pacific Bell bill, which included interexchange calls billed to the customer's account. The United States District Court granted a preliminary injunction prohibiting Pacific Bell from using that information for its awards program. [25] Pacific Bell has appealed this matter to the United States Court of Appeals for the Ninth Circuit.

XII. CONTINUING DEPENDENCE ON RBOC FACILITIES AND SERVICES

77. Much of our discussion has focused on the ability for an incumbent LEC to abuse its market power through discriminatory practices. It is important to recognize, therefore, the extent to which AT&T's interexchange services are dependent on the local exchange and access facilities of the RBOCs. This dependence is undeniable in light of how AT&T must connect its facilities to RBOC end offices, access tandems, and serving wire centers to reach its customers.

78. The only alternatives to current RBOC local exchange and access facilities are offered by competitive access providers ("CAPs") and the new CLECs that are seeking to enter into interconnection agreements with incumbent LECs. CAPs have grown since divestiture to offer dedicated access, dedicated transport, and switched transport services to IXCs seeking alternatives to the LECs, and a number have received authorization to provide local exchange

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[25] AT&T Communications of California et al. v. Pacific Bell, No. C 96-1691 (N.D. Cal. Order July 3, 1996).

service. Notwithstanding significant growth by CAPs over the past decade, however, and a vigorous campaign to move to alternative access facilities, AT&T still remains largely dependent on incumbent LECs. AT&T purchased more than 98% of its access facilities from incumbent LECs in 1996, and less than 2% of access from CAPs. On a dollar basis, payments to CAPs represent less than 1/2 of 1% of our total access expense.

79. Today, AT&T connects its Points of Presence (POPs) to the RBOC end offices and tandems using approximately 92% switched access and 8% special access. Aside from some limited CAP deployment, the only way currently to provide service to the vast majority of our customers who require switched access capability is through an incumbent LEC. While AT&T intends to increase its use of access connections from CAPs, we expect incumbent LEC monopoly control of access and local exchange facilities, and the lack of competitive alternatives, to persist for some time, leaving AT&T dependent on the incumbent LECs for the vast majority of its access needs.

80. Although CAPs are increasing their presence, their progress is slow relative to the entire market, and largely limited to major metropolitan markets, with a high concentration of their facilities in central business districts. In addition, CAPs are largely restricted to commercial users and transport services, and there is little prospect of CAPs offering service outside these geographic areas and market segments in the near future.

81. Specifically, CAPs currently, and certainly for the next few years, provide only a limited footprint of local access. Although AT&T has a number of agreements with CAPs, which cover some 95 cities, this only represents about 9000 buildings, which is a tiny fraction of the over

4 million commercial buildings in the U.S. Moreover, expansion of CAP services will be relatively slow as a result of capital constraints as well as physical constraints. It would take well over $100 billion to duplicate the RBOC's local exchange facilities.[26] Physical constraints include negotiation of rights of way, access to buildings, and negotiation of collocation arrangements with the incumbent LECs.

82. Unlike the RBOCs, for which AT&T generally has no alternatives, and with which AT&T has a long history of service performance, new suppliers (i.e., the CAP) must first satisfy certain standards to ensure reliability and quality. Before a CAP is certified, AT&T provides an on-site Network Validation Test ("NVT") and an Operations Readiness Assessment ("ORA"). The NVT evaluates the CAPs' network plant and equipment, including design, maintenance procedures and processes, and the physical installation of the vendor's equipment. It insures that the vendor's network meets necessary requirements for design, survivability, quality, and disaster recovery. The ORA is used to insure that a vendor can meet necessary requirements for ordering, provisioning, maintaining, performance reporting, and billing access services. While these processes can take six months to a year to complete and require significant resources, and thus raise additional barriers to the use of CLEC services, they are essential to ensure the quality of alternative access.

83. AT&T and other CLECs will be offering alternative local service in the future. AT&T anticipates that its local service will grow in the coming years, but notwithstanding the

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26 Wall St. J., March 20, 1995, p. R4.

growth of its local service and services available from other CLECs that offer facilities-based competition, AT&T currently remains almost entirely dependent on RBOCs. That dependence, for the vast majority of its access services and network elements associated with local service, will likely continue for some time. Until alternative facilities are widely deployed and operating, it is not reasonable to conclude otherwise.

XIII. CONCLUSION

84. As our discussion has demonstrated, SWBT has both the incentive and the ability to discriminate against IXCs and CLECs, and in favor of its interexchange affiliate. This discrimination can take many forms, both subtle and obvious. Moreover, once RBOCs are allowed to provide interexchange services, the types of discriminatory conduct can be expected to increase substantially, because, at that point, its interexchange affiliate will be in a position to benefit directly from the discrimination.

FCC DOCKET CC NO. 97-121
<u>AFFIDAVIT OF STEPHEN R. ALLEN AND DEAN A. GROPPER</u>

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on April 24, 1997

Dean A. Gropper
Dean A. Gropper

SUBSCRIBED AND SWORN TO BEFORE ME this 24 day of April 1997.

Louise M. Tomchak
Notary Public

My commission Expires:
LOUISE M. TOMCHAK
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 13, 2002

FCC DOCKET CC NO. 97-121
AFFIDAVIT OF STEPHEN R. ALLEN AND DEAN A. GROPPER

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on April 25, 1997

Stephen R. Allen

Stephen R. Allen

SUBSCRIBED AND SWORN TO BEFORE ME this 25 day of April 1997.

B Thacker

Notary Public

BERNICE THACKER
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 6, 2002

My commission Expires:

March 6, 2002

B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

Application by SBC Communications, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Oklahoma	))))	CC Docket No. 97-121

AFFIDAVIT

OF

WILLIAM J. BAUMOL

ON BEHALF OF

AT&T CORPORATION

AT&T EXHIBIT B

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of

Application by SBC Communications, Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of Oklahoma	))))	CC Docket No. 97-121

AFFIDAVIT OF WILLIAM J. BAUMOL

1. My name is William J. Baumol. I am Director of the C.V. Starr Center for Applied Economics at New York University, and Professor of Economics Emeritus at Princeton University. I have published more than 500 articles in professional economic journals and am the author or coauthor of more than two dozen books, including Toward Competition in Local Telephony (1994), Entrepreneurship, Management, and the Structure of Payoffs (1993), Economics: Principles and Policy (5th ed. 1991), Contestable Markets and the Theory of Industry Structure (rev. ed. 1988), The Theory of Environmental Policy (2d ed. 1988), and Superfairness (1986). I am past president of four professional organizations, including the American Economic Association, and have been elected to the National Academy of Sciences. A fuller statement of my background and qualifications is appended to this affidavit.